

## Office of Real Estate Services - Project Development Guide

### Chapter 15

#### Closing Projects

**23 CFR 710.201(f)**  
**23 CFR 710.403**  
**23 CFR Part 140**  
**23 U.S.C. 156**

#### REFERENCES

The final phase in the right-of-way (ROW) project development process is the closing of the project by the state Department of Transportation (DOT). During this phase, all records, documentation, and final ROW maps for the project are retained and stored; any excess properties and/or ROW encroachments are cleared from the project; and all financial claims are summarized and submitted for payment. The agency then submits the closing or final voucher.

For purposes of the instructions in this PDG, the project being closed is the ROW project. Closing the ROW project is generally prompted by the agency submission of the ROW Certification for the project. See Chapter 13. If the ROW acquisition was authorized as part of a larger project, then completion of acquisition will not prompt closing of the project.

The acquiring agency's claims and records may be subject to auditing by the agency's internal audit staff, the Federal Highway Administration (FHWA), or the U.S. DOT Office of Inspector General.

#### 15.1. CLOSING REGULATIONS

The regulations which prescribe record keeping and retention requirements for the Federal-aid highway program are found in 23 CFR 710.201(f). These regulations define the types of records and the period of time these records are to be held for auditing and/or inspection. The regulations which prescribe billing procedures to be followed in claiming reimbursable costs for the Federal-aid highway program are found in 23 CFR Part 140.

#### 15.2. STEPS TO PROJECT CLOSING

##### Step 1.

The initial step to closing a ROW project is the accumulation of all official project records. These records include all accounts, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by the agency, firm, or individuals in connection with a Federal-aid highway project.

Closing a project is more than just closing the book on it. There is much to be done to finalize a ROW project: record keeping, disposals, certificates, etc., must be dealt with. This chapter discusses what is to be done when closing a Federal-aid project.

#### SUMMARY

This also includes, but is not limited to, financial records, supporting documentation, statistical records, and other records pertinent to the Federal-aid ROW project. These records should be kept in a central location by the acquiring agency. Records pertaining to the project such as acquisition and relocation costs shall be retained for a minimum period of 3 years with some exceptions. The 3 year retention period starts when final claims are submitted for payment.

- Per 23 CFR 710.201(f), the acquiring agency shall maintain adequate records to demonstrate compliance with the requirements of both 23 and 49 CFR. Therefore, if any litigation, claim, or audits are started before the expiration of the 3 year period, the records should be retained until all litigations, claims, or audit findings involving the records have been resolved.
- Records of nonexpendable property acquired with Federal-aid funds should be retained for 3 years after the final disposition of the property.
- Records may be transferred to the FHWA for retention in unusual situations.

#### **RECORD RETENTION**

### **Step 2.**

The next step in project closing is to review the project's final ROW plans. This step is necessary in order for the agency to identify any excess lands or uneconomic remnants not needed for the construction, operation, and maintenance of the highway facility.

Uneconomic remnants acquired by the agency but not incorporated into the ROW may be disposed of without the FHWA approval, but the Federal share of net income from the sale or lease of excess real property shall be used by the acquiring agency for activities eligible for funding under Title 23 of the United States Code (U.S.C.).

#### **UNECONOMIC REMNANTS**

Excess properties identified during this review should be made a part of the agency's inventory of excess lands and submitted to the department responsible for the disposal and management of excess lands. Any excess property should be disposed of in accordance with agency disposal procedures. If property is disposed of for its fair market value (FMV), a credit to the FHWA is not required when the Federal share of the net income is used by the acquiring agency for activities eligible for funding under Title 23 U.S.C.

Another reason to review the final ROW plan is to identify encroachments within the ROW. Encroachments identified during this review should be directed to persons responsible for maintaining the integrity of the highway facility. These need to be removed or eliminated,

and the ROW cleared.

### Step 3.

ROW claims for reimbursement must be supported by records described in Step 1, above.

The claims can be reimbursed as part of a progress voucher or as part of the final voucher. All ROW costs should be incurred and accounted for before submitting the final voucher.

This may not be possible when there are outstanding condemnation cases or litigation which extends beyond the completion of the highway's construction. On those projects, the agency may consider alternative method for closing ROW projects. Some state DOTs close the existing project and create a new project that is used to accumulate the costs of outstanding condemnations or other litigations. Those state DOTs that close the project prior to finalizing all litigation amounts, simply re-open the project and revise the final voucher to reflect the condemnation amount.

Some state DOTs create a new project to accumulate outstanding ROW costs. When all ROW costs on a project have been incurred except for outstanding litigation cases, the agency requests that the outstanding cases be made a part of special fiscal project file. After final judgment, the final cost is paid from this special project. This allows the agency to close its ROW project in a timely manner. Other state DOTs reduce the remaining obligated balance to zero and keep the project open pending the outcome of the court cases. The goal is to keep unexpended balances to a minimum.

#### **REDUCING UNEXPENDED BALANCES**

Closing projects assists in managing obligation authority, such that large amounts of unexpended obligated funds do not remain unused on dormant projects. When a regular project is closed, any unexpended funds should be transferred to a new or existing project involving the same class of funds. As an additional option, the closed project can be re-opened at a later date to cover any eligible costs not yet reimbursed, which the agency may later discover.

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